DOCKET NO. NNH-CV14-6049044-S	:	SUPERIOR COURT
NUCAP INDUSTRIES INC., ET AL.	:	J.D. NEW HAVEN
VS.	:	AT NEW HAVEN
PREFERRED TOOL AND DIE, INC., ET AL.	:	OCTOBER 9, 2014

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO MOTION OF DEFENDANT PREFERRED TOOL AND DIE, INC. AND PREFERRED AUTOMOTIVE COMPONENTS TO DISMISS AND/OR TRANSFER VENUE

Plaintiffs Nucap Industries Inc. ("Nucap Industries") and Nucap US Inc., as the successor to Anstro Manufacturing ("Nucap US") (collectively "Plaintiffs" or "NUCAP"), respectfully file this Memorandum of Law in Opposition to the Motion to Dismiss and/or Transfer Venue ("Motion") of Defendants Preferred Tool and Die, Inc. ("Preferred Tool"), and Preferred Automotive Components, a division of Preferred Tool and Die ("Preferred Automotive") (collectively, "Preferred").

I. INTRODUCTION

This is an action concerning the wrongful and systematic misappropriation of Plaintiffs' trade secrets, as orchestrated by Defendants Robert A. Bosco, Jr. ("Bosco") and Preferred. Bosco is a former executive at Nucap US and used his position at the company to furtively remove some of Plaintiffs' most heavily confidential materials, including information and specifications for the design and manufacture of Plaintiffs' core product lines. Rather than respond to Plaintiffs' claims on the merits, Preferred has elected to file this Motion in a transparent attempt to delay this matter and to litigate it in their chosen forum, in disregard for the well-established deference afforded to a plaintiff's choice of forum.

The Motion should be denied and this case should proceed to the merits. The harm inflicted by Defendants' wrongful conduct is far reaching and will be felt by Plaintiffs throughout the State of Connecticut, in locations including but not limited to New Haven. The

nature of this action as one for the misappropriation of trade secrets makes venue a particularly challenging inquiry at this stage of the proceedings and courts have recognized that the type and precise location of the harm in trade secrets is generally difficult to ascertain. The same is true here, where Defendants have concealed their actions from Plaintiffs and intentionally have prevented Plaintiffs from learning the true scope of their conduct. Defendants should not be permitted to benefit from their own deceptive behavior to manipulate Plaintiffs' choice of forum.

II. BACKGROUND

Plaintiffs filed this action after learning facts that Bosco and Preferred were relying on NUCAP's proprietary trade secrets to enter the market for designing, developing, manufacturing and/or marketing products competitive with those of NUCAP. *See* Complaint ("Compl.) at ¶¶ 1-6. Bosco is a former executive at Nucap US and, during his period with the company, was exposed to some of NUCAP's most sensitive business and engineering secrets. *Id.* at ¶ 42.

Until recently, Preferred was not a competitor of NUCAP in the market for automotive products. *Id.* at ¶ 52. Rather, Preferred was a manufacturing company in the medical and electrical fields, with some involvement in consumer goods. *Id.* at ¶ 53. Within the last year, Preferred has decided to expand its business model and attempt to enter the market for the manufacture and design of automotive parts, in competition with NUCAP. *Id.* at ¶ 54. Not coincidentally, Preferred's decision to compete with NUCAP came after or around the same time when Bosco first became affiliated with Preferred. *Id.* at ¶ 55. Preferred has additionally poached away two former NUCAP engineers and product development employees—Carl Dambrauskas and Tom Reynolds. *Id.* at ¶ 56.

Preferred is targeting NUCAP customers with its brand new product lines and relying on NUCAP's own product designs to do so. *Id.* at ¶ 64. When NUCAP obtained a copy of a packet that Preferred, through Dambraskas, sent to one of NUCAP's customers pitching Preferred's new

product line, NUCAP was surprised to learn that the "new" Preferred product drawings, material data sheets, and samples were strikingly similar to products NUCAP had designed and manufactured for several years, including during the period when Bosco, Dambrauskas, and Reynolds were associated with Nucap US. *Id.* at ¶ 71. Given the difficulty that any new competitor would have in being able to quickly "go to market" with competitive products based on the amount and degree of testing, trial and error and other "normal" steps in the design/development/manufacturing process for these highly technical components, and the fact that Preferred's product offerings are strikingly similar to NUCAP's own product offerings, NUCAP believes it is certain and asserts that Preferred has benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's brake shims. *Id.* at ¶ 73.

The scope of Preferred's and Bosco's wrongdoing is exceptionally broad, as is the harm felt by Plaintiffs as a result of Defendants' wrongdoing. While Plaintiffs are still unaware of the full extent of Defendants' actions (as they have been intentionally concealed from Plaintiffs), both the nature of the wrongdoing and the business' operations of Plaintiffs and Defendants make certain that the harm will resonate throughout the State of Connecticut, including but not limited to the New Haven Judicial District, as well as in other locations nationwide where Plaintiffs conduct business. The fact that neither Bosco nor Preferred are residents of the New Haven Judicial District is irrelevant under these circumstances, as the underlying harm will be felt in New Haven.

III. ARGUMENT

A. Venue Is Proper In The New Haven Judicial District.

"Venue is not a jurisdictional question but a procedural one." *Savage v. Aronson*, 214 Conn. 256, 263, 571 A.2d 696 (1990). In Connecticut, "[s]tatutory venue requirements simply

confer a privilege not to be required to attend court at a particular location." *Id.* (internal quotations omitted). Venue can be waived by the parties and "concerns only the place where the case may be tried." *Haigh v. Haigh*, 50 Conn.App. 456, 465, 717 A.2d 837 (1998).

As Plaintiffs are both corporations, General Statutes § 51-345(c) applies and provides in relevant part as follows: "(4) If the plaintiff is a foreign corporation and the defendant is a corporation, domestic or foreign, to the judicial district where (A) the injury occurred, (B) the transaction occurred, or (C) the property is located or lawfully attached." Conn. Gen. Stat. § 51-345(c).

"General Statutes Sec. 51-345 does not define the scope of the phrase 'transaction occurred.'" *Construction Services of Bristol, Inc. v. Sanseer Mill Assoc. Ltd. Partnership*, 1992 Conn. Super. LEXIS 778, at *13 (Conn. Super. Ct. Mar. 17, 1992). While Connecticut decisional law does not provide helpful context for the terms "transaction occurred" or "injury", cases from other jurisdictions examining analogous state law trade secrets claims demonstrate that the injury caused by trade secrets misappropriation is exceedingly far-reaching and broadly construed.

A trade secret plaintiff may run its business nationally (as NUCAP does) and thus experience the injury in several or many states. *Mergenthaler Linotype Co. v. Leonard Storch Enters., Inc.*, 66 Ill. App. 3d 789, 803, 383 N.E.2d 1379, 1389 (1st Dist. 1978). When the plaintiff has offices in multiple locations, the harm will often be experienced in the ***state*** of its headquarters. *Lam Research Corp. v. Deshmukh*, 157 Fed. Appx. 26, 27 (9th Cir. 2005) (discussing location of harm in trade secrets case in context of choice of law determination). The injury can also occur where the defendant makes use of the secret. *Id.* Here, the Complaint alleges that Preferred and Bosco have engaged in a coordinated scheme to misappropriate

Plaintiffs' trade secrets and have furthered their wrongful conduct by using those materials to make near-duplicate products, which Preferred has marketed to its customers. While Nucap US has its headquarters in Wolcott, both NUCAP and Nucap US are companies that operate on a national scale in the United States. Their largest presence is in Connecticut, such that the harm to Plaintiffs will resonate throughout the entire State of Connecticut. It is likely that at least some of the underlying transactions implicate New Haven as the proper venue for this dispute as well.

At this stage of the proceedings, it is nearly impossible for Plaintiffs to ascertain the precise location and extent of Defendants' wrongful conduct. Courts have recognized this unique difficulty in the context of trade secret cases. *Bulldog N.Y. LLC v. Pepsico, Inc.*, 2014 U.S. Dist. LEXIS 42713, 16-17 (D. Conn. Mar. 31, 2014) (noting "location of injury for misappropriation claims is often not easily identifiable in trade secret actions". Without some discovery, the precise locations in which Defendants misappropriated or used Plaintiffs' trade secrets will be unknown. This is especially true where Defendants have concealed their conduct from Plaintiffs and attempted to copy NUCAP's product lines by secretly removing NUCAP's information and then relying on that information to give Preferred an unfair advantage in product development and launch.

What Plaintiffs do know with certainty is that the harm is extensive and will impact NUCAP's business across the State of Connecticut (including New Haven) and elsewhere. The harm is likely to occur in multiple locations, since Preferred has effectively copied NUCAP's product designs for two key products—shims and caliper hardware—and is using those designs to sell product on the open market, throughout the state and nationally, at an unfair advantage. This harm is ongoing and continuous. Plaintiffs believe Preferred's wrongful conduct is

continuing unabated and that Preferred will market its products (specifically, those it has stolen from NUCAP) to customers and clients throughout Connecticut. For these reasons, both the location of the underlying injury and transactions make New Haven a proper venue for this dispute.

B. Alternatively, The Proper Remedy For Improper Venue Is Transfer, Not Dismissal.

In the event this Court determines that venue is not proper in this District, then the appropriate remedy would be to transfer this action to a different judicial district. *Construction Services*, 1992 Conn. Super. LEXIS 778, at *14 (denying motion to dismiss for improper venue and noting that "the remedy for improper venue is transfer"). Dismissal of the action would be inappropriate, especially where both Bosco and Preferred have admitted that another adequate and proper forum exists in Connecticut for this dispute. *See* Bosco Motion at 4-5; Preferred Motion at 3.

IV. CONCLUSION

Based on the foregoing reasons, Plaintiffs respectfully submit that Preferred's Motion to Dismiss should be denied in its entirety. In the alternative, Plaintiffs would suggest that the appropriate remedy for improper venue would be to transfer this case to another judicial district in Connecticut.

PLAINTIFFS,
NUCAP INDUSTRIES, INC. and NUCAP US, INC.

By *_/s/Nicole H. Najam_*

Stephen W. Aronson
Email: saronson@rc.com
Nicole H. Najam
Email: nnajam@rc.com
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel. No. (860) 275-8200
Fax No. (860) 275-8299
Juris No. 50604

Of counsel:
DUANE MORRIS LLP
Lawrence H. Pockers
(*Pro Hac Vice*)
Harry M. Byrne
(*Pro Hac Vice*)
30 South 17th Street
Philadelphia, PA 19103
Telephone: 215.979.1000
Fax: 215.979.1020
LHPockers@duanemorris.com
HMByrne@duanemorris.com

Attorneys for Plaintiff

CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 9th day of October, 2014 to all counsel and self-represented parties of record, as follows:

Stephen J. Curley, Esq.
Brody Wilkinson, P.C.
2507 Post Road
Southport, CT 06890

David A. DeBassio, Esq.
Hinckley Allen & Snyder LLP
20 Church Street
Hartford, CT 06103

/s/Nicole H. Najam
Nicole H. Najam